TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 528.

THE UNITED STATES, APPELLANTS,

vs.

CHARLES ROMAN AND O. C. OLIVIER.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 14, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 528.

THE UNITED STATES, APPELLANTS,

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CHARLES ROMAN AND O. C. OLIVIER.

APPEAL FROM THE COURT OF CLAIMS.

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1 *Petition.—Filed June* 12, 1871.—J. R.

U. S. Court of Claims, December term, 1871.

ROMAN & OLIVIER
vs.
THE UNITED STATES. } No. 6344.

To the honorable the Court of Claims:

The petition of Charles Roman and O. Charles Olivier, residing in the city of New Orleans, and native citizens of the United States, respectfully shows:

That in the year 1865 they were established in the city of New Orleans as commercial partners, under the firm-name of Roman & Olivier, each of them having an equal interest in said firm, and then engaged in a transaction in cotton, as follows:

Petitioners aver that by the 8th section of an act of Congress of July 2d, 1864, it was enacted that it should be lawful for the Secretary of the Treasury, with the approval of the President, to authorize agents to purchase for the United States any produce of States declared in insurrection at such places as should be designated therein, and at such prices as should be agreed upon with the seller, not exceeding the market-value thereof at the place of delivery, nor exceeding three-fourths of the market-value thereof in the city of New York, at the latest quotations known to the agent purchasing; and under the authority of this act, and in accordance therewith, the Secretary of the Treasury, on the 24th day of September, 1864, with the approval of the President, of the same date, issued general regulations for the purchase of products of the insurrectionary States on government account, and, on the 9th of May, 1865, certain amended regulations relating to the same object.

Your petitioners show that, in pursuance of said regulations, the petitioners sold to the United States and repurchased through O. N. Cutler, the purchasing-agent of the United States, on June 15, 1865, one hundred and forty-two bales of cotton, and abandoned thirty-five bales of said lot of cotton to the said O. N. Cutler for the use of the United States.

2 Your petitioners show that the said thirty-five bales of cotton were illegally exacted of them and abandoned by them in error, because, before said payment was made, to wit, on the 13th of June, 1865, the President of the United States had annulled and removed all restrictions on trade east of the Mississippi River, as by law he had a right to do, and that thereby the 8th section of the act of July 2d, 1864, became inoperative and was repealed as regards the city of New Orleans, which lies east of the Mississippi River.

Your petitioners further represent that they are advised and believe that the said O. N. Cutler, the aforesaid purchasing agent of the United States, regularly rendered his accounts to the Treasury Department, and shipped said thirty-five bales of cotton to the government agent in New York, by whom they were sold, and the proceeds thereof paid into the Treasury of the United States.

And whereas from the premises it appears that the Treasury of the United States has thus erroneously and illegally received the proceeds of said thirty-five bales of cotton, an implied obligation arises on the part of the United States to refund to petitioners said proceeds, the amount whereof can only be ascertained through the Treasury Department of the United States.

Wherefore your petitioners submit and pray that a decree may be rendered, declaring that they are entitled to said proceeds.

Your petitioners further aver that they have at all times borne true allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said government.

LOUIS JANIN & SONS,
HUGHES, DENVER & PECK,
Solicitors for Claimant, Washington, D. C.

Address of claimants: New Orleans, La.

O. C. Olivier (of the firm of Roman & Olivier), being duly sworn, deposes that he has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said government; that no assignment or transfer of the claim set forth in the foregoing petition, or any part thereof, or any interest therein, has been made, except as in the said petition stated; that the affiant's firm is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that he believes the facts as stated in said petition are true.

O. C. OLIVIER.

Sworn to and subscribed before me this sixth day of March, 1869.

[SEAL.] D. AUGUSTIN,
U. S. Commissioner for the Dist. of La.

Charles Roman, being duly sworn, deposes that he has at all times borne true allegiance to the Government of the United States,
3 and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said government; that no assignment or transfer of the claim set forth in the foregoing petition, or any part thereof, or any interest therein, has been made, except as in the said petition stated; that the affiant's firm is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that he believes the facts as stated in said petition are true.

CHAS. ROMAN.

Sworn to and subscribed before me this sixteenth day of February, 1869.

[SEAL.] D. AUGUSTIN,
U. S. Commissioner for the Dist. of La.

4 In the Court of Claims of the United States, December term, A. D. 1870.

ROMAN AND OLIVIER
vs.
THE UNITED STATES. } No. 6344.

And now comes the Attorney-General, on behalf of the United States, and makes answer to the petition of the claimants herein; and not confessing the same, or any part thereof, denies each and every the allegations therein contained, and calls for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the United States are indebted to the said claimants in the sum of the proceeds of thirty bales of cotton, says that they are not indebted to the said claimant in the said sum of money, or any part thereof.

And as to so much of the said petition as avers that the said claimants have at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said government, denies the said allegation.

THOMAS H. TALBOT,
Assistant Attorney-General.

Filed August 11, 1871.

5 In the Court of Claims of the United States.

ROMAN AND OLIVIER
vs.
THE UNITED STATES. } No. 6344.

Set-off and counter-claim.

The said defendants, by Thomas Simons, Assistant Attorney-General, come and say that the said plaintiffs, before and since the commencement of this suit, were, and still are, indebted to the said defendants in a large sum of money, to wit, $1,131.80, the same being for internal-revenue tax upon the 142 bales of cotton brought by them into New Orleans.

6 Wherefore the Assistant Attorney-General prays that judgment be entered against claimants for the said sum of $1,131.80.

THOMAS SIMONS,
Assistant Attorney-General.

Filed 17, 1876.

7 In the Court of Claims.

CHARLES ROMAN AND O. CHARLES OLIVIER
vs.
THE UNITED STATES. } 6344.

At a Court of Claims held at the Capitol in the city of Washington the first day of June, A. D. 1876, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimants, and do order, adjudge, and decree that the said Charles Roman and O. Charles Olivier, claimants, do have and recover of and from the United States the sum of three thousand nine hundred and seventy-one dollars and ninety-six cents ($3,971.96).

By the court.

A true copy of record.

8 In the Court of Claims of the United States, Dec. term, 1875.

CHARLES ROMAN AND O. CHARLES OLIVIER
vs.
THE UNITED STATES. } No. 6344.

From the judgment rendered in the above-entitled cause on the first day of June, 1876, in favor of claimants, the defendants, by their Attorney-General, on the 26th day of August, 1876, make application for, and give notice of, an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Ass't Attorney-General.

Filed August 26, 1876.

AT-CHAMBERS.

Allowed.

C. D. DRAKE, *C. J.*

9 Court of Claims.

CHARLES ROMAN AND O. CHARLES OLIVIER
vs.
THE UNITED STATES. } No. 6344.

This case having been heard by the Court of Claims, the court upon the evidence finds the facts to be as follows:

On the 12th of June, 1865, there arrived at New Orleans, on the steamer Grey Eagle, from Vicksburgh, 142 bales of cotton belonging to the firm of Roman & Olivier. At that time no shipments of cotton to New Orleans were allowed, except such as were consigned to the purchasing-agent of the Treasury. On the 13th of June, 1865, Roman & Olivier executed a bill of sale of all the cotton to the purchasing-agent (without any expressed consideration), and on the same day the Treasury agent executed to them another bill of sale (also without any expressed consideration) of 107 bales thereof. Roman & Olivier thereupon received the 107 bales and the Treasury agent retained the 35 bales, such interchanged bills of sale being in fact one transaction, intended to be in compliance with the act of July 2, 1864 (13 Stat. L., 375, § 8), and the Treasury regulations thereunder of May 9, 1865. The 35 bales were subsequently shipped to S. Draper, United States cotton-agent at New York, and sold by him, producing a net average of $137.74 per bale, or $4,820.90 net for the 35 bales, and said proceeds have been duly paid into the Treasury.

The 107 bales were returned to claimants free from all fees and internal-revenue taxes.

The internal-revenue tax of 2 cents per pound on said 142 bales of cotton amounted to $1,131.80. At the date of said transaction neither Roman & Olivier nor the purchasing-agent had knowledge of the Presidential proclamation of June 13, 1865.

And upon the foregoing findings of fact the Court of Claims decides as

Conclusions of law.

I. The claimant is entitled to recover the avails of 35 bales of cotton exacted from them by the Treasury agent in New Orleans on the 13th June, 1865, amounting to $4,820.90.

II. The defendants are entitled to recover the internal-revenue tax of 2 cents per pound on the 107 bales of cotton returned to them by the Treasury agent in New Orleans on the 13th June, 1865, amounting to the sum of $848.94.

III. The defendants are not entitled to recover the internal-revenue tax on the 35 bales of cotton exacted and withheld from the claimants by the Treasury agent at New Orleans on the 13th June, 1865.

IV. Judgment should be entered for the claimants for the balance remaining after deducting said set-off in favor of the defendants, to wit, $3,971.96.

10 NOTT, J., delivered the opinion of the court:

This is an action brought to recover the value of 35 bales of cotton exacted by the Treasury agent in New Orleans, on the 13th June, 1865, pursuant to the act 2d July, 1864 (13 Stat. L., p. 375, § 8), and the

Treasury regulations thereunder 9th May, 1865. The cotton, of which this was one-fourth, was brought from the east bank of the Mississippi, and the facts are almost identical with those in the recent case of De Bow's assignee. Therefore the claimants' right to recover must be deemed to have been already determined, and the only question which can be considered in this court arises from the set-off or counter-claim which the defendants have set up.

The counter-claim is for the internal-revenue tax of 2 cents per pound on the cotton. This the defendants allege they might have collected if the agreement of sale and resale with the Treasury agent had never existed. By the terms of the bill of sale given to the claimants by the Treasury agent on the 13th of June, 1865, 107 bales of cotton were returned to them "free from all fees and internal-revenue taxes." If this bill of sale had never been given; if all of the cotton had been handed over to the owners without the exaction of one-fourth, non constat but that the government might have collected the internal-revenue tax upon it. We perceive no reason why such a counter-claim should not be set up. If the transaction was a mistake against the claimant as regards the exaction of one-fourth of the cotton, it was also a mistake as against the government in giving up three-fourths free from all fees and internal-revenue taxes. In the modern English case of Delancey vs. The Queen (6 L. R. Exch. R., p. 286), the Crown pleaded as a set-off a tax which, by mistake of the commissioners of inland revenue, had never been laid upon a legacy, and the court adjudged the case in favor of the Crown upon this set-off. The right given to the United States by the amended Court of Claims act (Rev. Stat., § 1091) to resort to a cross-action against the claimant, is certainly as comprehensive as the similar right given to the Crown by the petitions of right act of 1860 (23 and 24 Vict., c. 34), and the English case is an authority in point.

But it by no means follows that the government should recover taxes upon cotton which was withheld from the claimant, over which he exercised no rights of ownership, and from which he has hitherto derived no advantage whatever. The recovery in these actions has been limited to the actual avails of the cotton, i. e., the price which it subsequently brought in the government's hands. As a matter of fact this price was less than the value of the cotton when it was withheld from the owners by the Treasury agent in New Orleans. The claimants never enjoyed the right to use or dispose of the cotton so withheld, and as it was never in their unrestricted or legal possession there can be no propriety in the government recovering taxes upon it, which they illegally withheld from the owner and have never been restored to him.

The judgment of the court is that the claimants recover of the defendants the value of the 35 bales of cotton withheld from them, to wit, the sum of $4,820.90, and that the defendants recover under their plea of set-off the internal-revenue tax on the 107 bales of cotton returned to the claimants, amounting to $848.94, and judgment will be entered for the claimants for the balance remaining, to wit, $3,971.96.

11 In the Court of Claims.

ROMAN AND OLIVIER
vs.
THE UNITED STATES
No. 6344.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the

above-entitled cause, and the final judgment of the court thereon; of the application of the Attorney-General for the defendants for the allowance of an appeal, as filed in the clerk's office August 26, 1876, and of the order of the chief justice of said court allowing the same; of the findings of fact by the court, and conclusions of law thereon; and of the opinion of the court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this ninth day of October, A. D. 1876.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 528. The United States, appellants, *vs.* Charles Roman & O. C. Oliver. Court of Claims. Filed 14th October, 1876.